

Conversely, respondent contends the Order should be affirmed. Respondent argues claimant had a meniscus tear in his right knee before the August 2003 accident and, therefore, claimant has failed to prove the present need for medical treatment to the right knee is related to that accident. Consequently, respondent requests the Board to reject claimant's request for medical benefits for the right knee.

The only issue before the Board on this appeal is whether claimant has proven that his present need for medical treatment to the right knee is the result of the August 2003 accident that he sustained while working for respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and after considering the parties' arguments, the Board finds and concludes:

The preliminary hearing Order should be affirmed. The Board concludes claimant has failed to establish that his present need for medical treatment to his right knee is the result of the August 14, 2003, accident that he sustained while working for respondent rather than the result of an earlier injury in which he tore the rim of his meniscus.

Approximately a week before August 14, 2003, claimant commenced working for respondent, a temporary employment agency. On August 14, 2003, a heavy box fell and hit claimant in his knee. The record is not consistent as claimant testified the box struck his right knee<sup>1</sup> but the medical records introduced at the preliminary hearing indicate the box struck claimant's left knee. Claimant also testified he struck his right knee on a steel plate at the time of the August 2003 accident and that he has had symptoms in his right knee since the accident.

Claimant contends he has established the relationship between the August 2003 accident and his present need for medical treatment to the right knee as his right knee was allegedly asymptomatic before the accident. Moreover, claimant contends the medical notes from Dr. Kenneth A. Jansson establish the relationship between the accident and claimant's present need for right knee treatment. Those medical notes, which are dated September 15, 2003, state, in part:

I think on the right side, Steve [claimant] seems to have an exacerbation of this condition we saw him for last year. I suspect he still has the meniscus tear in there that is irritating him.<sup>2</sup>

On the other hand, the record also includes medical notes, which are dated November 10, 2003, from Dr. Robert L. Eyster that include a history that claimant has had popping, irritation and pain in the back of his right knee for a long time.

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<sup>1</sup> P.H. Trans. at 8.

<sup>2</sup> See P.H. Trans., Cl. Ex. 2.

Although Dr. Jansson believes the August 2003 accident exacerbated claimant's right knee, the doctor's medical records do not directly address the question whether that exacerbation is merely temporary or, more importantly, whether the accident precipitated claimant's present need for medical treatment. Consequently, at this juncture, the Board affirms the Judge's finding that claimant failed to prove his present need for medical treatment to the right knee is related to the August 2003 accident.

**WHEREFORE**, the Board affirms the February 23, 2004, preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2004.

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BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant  
Roger E. McClellan, Attorney for Respondent and its Insurance Carrier  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director